

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

77-1167

77-1167

BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS
for the Second Circuit

Docket No. 77-1167

UNITED STATES OF AMERICA, Appellee

vs.

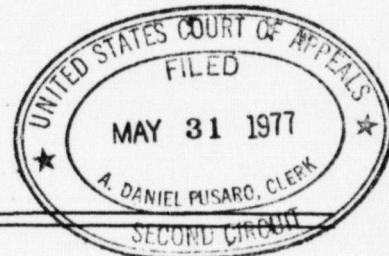
LOUIS CARINI, Appellant

Appeal from the United States District Court
for the Western District of New York

Brief and Appendix

David G. Larimer, Esq.
Attorney for Appellant

Cr. No. 74-106



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ISSUE PRESENTED*

In the opinion of Appellant, the following issue is presented:

Whether the thirty-four month delay from the date of the filing of the information to the trial deprived Appellant of his Sixth Amendment right to a speedy trial?

*This case has not previously been before this Court.

UNITED STATES COURT OF APPEALS
for the Second Circuit

Docket No. 77-1167

UNITED STATES OF AMERICA, Appellee

vs.

LOUIS CARINI, Appellant

Appeal from the United States District Court
for the Western District of New York

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

On March 15, 1974 an information was filed against Appellant charging him in ten counts with failure to deposit in a special bank account Federal Insurance Contributions Act taxes and federal income taxes

withheld from wages as required by 26 U.S.C. Section 7512 all in violation of Section 26 U.S.C. Section 7215.

Trial by jury was commenced before the Honorable Harold P. Burke, in the Western District of New York, on January 27, 1977 and the jury returned guilty verdicts on all counts on January 31, 1977.

On February 28, 1977 the Defendant was sentenced and fined \$500 on each of the ten counts with all but the fine on count One remitted. This Appeal followed.

CHRONOLOGY OF THE CASE

An information was filed against Appellant on March 15, 1974 charging him with failure to deposit in a separate bank account Federal Insurance Contributions Act taxes and federal income taxes withheld from employee wages in violation of 26 U.S.C. Section 7215.

Appellant was President of Carini Construction Company, a contracting firm that had been in business in Rochester, New York since 1964 (Tr. 103-104)¹

¹ "Tr." signifies the transcript of the trial.

Appellant was arraigned on March 25, 1974 and pleaded not guilty to the charges. At this point Appellant was represented by retained counsel. On April 30, 1974 and September 18, 1975 the Government filed its standard Motion to Set a Date for Trial.

On October 28, 1975, approximately eighteen months after Appellant had been charged by the filing of the information, Appellant filed a Motion to Dismiss the information claiming that he had been deprived a speedy trial in violation of the Sixth Amendment.

Six months later on March 2, 1976, the Honorable Harold P. Burke, denied the Appellant's Motion without Decision.

Throughout 1976, the case still was not reached for Trial although the Government filed motions to set dates for trial on April 29, 1976, at the beginning of the May trial term and on December 7, 1976. Finally on January 27, 1977, the first date on which the case was actually set for trial, trial commenced approximately thirty-four months after the Defendant was charged.

The trial date in this case of January 27, 1977 was set by the District Court on or about December 13, 1976. Appellant's Motion for Discovery which was filed January 14, 1977 did not delay the trial at all since it was made to supplement the voluntary discovery that had taken place between the Government and defense counsel. That Motion was never argued or ruled upon by the Court since all matters were consented to by the Government.

Immediately preceding trial, the Defendant renewed his Motion to Dismiss for lack of a speedy trial which was denied by the Court without comment. (Tr. 2)

ARGUMENT

THE THIRTY-FOUR MONTH DELAY BETWEEN THE FILING OF THE INFORMATION AND THE TRIAL DEPRIVED THE APPELLANT OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL

Under the tests established by the Supreme Court in Barker v. Wingo, 407 U.S. 514 (1972) and cases in this Circuit interpreting Barker v. Wingo, it is clear, in Appellant's view, that Appellant has been denied his Constitutional right to a speedy trial.

The Court in Barker v. Wingo, supra, established a "balancing test" that identified four factors as relevant to judicial consideration of speedy trial claims: (1) the length of delay, (2) the reason for the delay, (3) the defendant's assertion of his right and (4) the prejudice to the defendant from the delay. 407 U.S. at 530.

In our view, an analysis of all the four factors enumerated by the Supreme Court in Barker v. Wingo suggests that Appellant was denied his right to a speedy trial and that the judgment should be reversed and the information dismissed.

Of course it is essential to examine the totality of circumstances in considering whether or not Appellant was denied his right to a speedy trial under the tests set forth in Barker v. Wingo. In our view the total delay between the filing of the information and the trial is so substantial as to be one of the primary factors in considering whether Appellant's rights were violated. The total length of time from the filing of the information on March 15, 1974 to the date of trial on January 27, 1977 is more than thirty-four months.

This substantial period of delay for this simple case should if not compel dismissal at least require the Government to justify the delay with compelling reasons. It should be noted that this extensive period of delay is far in excess of the time periods allowed now by the Speedy Trial Act, 18 U.S.C. Section 3161 - 3164. In light of the stringent provisions of that Act this extensive delay seems to be exactly the type that the Speedy Trial Act was meant to correct. In our view this substantial period of delay is so excessive that the length of delay alone ought to be grounds for dismissal. There is simply no reason apparent for an almost

three year delay from the filing of the charges to the trial.

The case was a simple one eventually only taking three days to try. There were no co-defendants and few witnesses for both sides. The case was hardly a complicated one for the Government to prosecute. The Government's case was primarily documentary and was essentially completed upon the filing of the information.

Although this Court has apparently not used such guidelines, at least one other Federal Circuit has established that delay for more than a twelve month period raises at least a prima facie case for violation of a defendant's Sixth Amendment right to a speedy trial. See e.g. United States v. Jones, 524 F. 2d 834 (D. C. Cir. 1975); United States v. Brown, 520 F. 2d 1106 (D.C. Cir. 1975); United States v. Calloway, 505 F. 2d 311 (D.C. Cir. 1974).

Here the delay was approximately three years instead of one which by itself is so significant as to require reversal.

Even if the thirty-four month period is not of itself sufficient to require reversal, as this Court pointed out in United States v. Roberts, 515 F. 2d 642, 646 (1975):

"A delay not patently unreasonable in length may nonetheless be intolerably long in light of 'the peculiar circumstances of the case,' quoting Barker v. Wingo, 407 U.S. 512 (1972)

In our view the delay in this case is intolerable in light of all the circumstances.

Certainly the case itself did not require extensive trial preparation by the Government. As noted above this was a simple case with no co-defendants and few witnesses. The Government's case rested essentially on documentary evidence which was explained by Internal Revenue Service agents.

After the Defendant was arraigned in March, 1974 there was very little activity in the case which would have otherwise prevented a quick trial.

The Government did file its standard Motion to Set Date for Trial at the beginning of both the May,

1974 trial term and the October, 1975 trial term.

Although there had been some discussion of a guilty plea by the corporation instead of by Appellant personally shortly after the filing of the information, the Government withdrew its offer very soon after the filing of the information since it subsequently refused to allow this type of disposition.

After eighteen months had elapsed and the case had still not yet been assigned a trial date, Appellant moved on October 28, 1975 to dismiss the information for lack of a speedy trial.

Incredibly, the Appellant's Motion to Dismiss for lack of a speedy trial was not denied by the District Court for over four months after its filing.

Appellant respectfully suggests that this delay demonstrates the Court's apparent lack of interest in getting this case to trial.

Although the District Court was obviously aware in October, 1975 that Appellant was complaining of his lack of a speedy trial, it was four months before the motion was denied without opinion, and another ten

months thereaft. before the case was brought to trial.

This type of delay in this particular District Court has very recently been the subject of this Court's concern.

In United States v. Vispi, 545 F. 2d 328 (1976) this Court reversed a judgment of conviction for failure to file personal income tax returns and ordered the information against the defendant dismissed on the grounds that the defendant was denied his Sixth Amendment right to a speedy trial.

Many of the problems which existed in Vispi before the District Court also exist in the instant case before the same Court.

In Vispi the delay was only twenty months from the filing of the information to trial but this Court found it significant that the period of delay was preceded by a substantial period of pre-accusation delay. 545 F. 2d at 333.

In Vispi the defendant moved to dismiss the information for lack of a speedy trial fifteen months after the filing of the information and this Court noted with disapproval

that in spite of that filing the case was not brought to trial for another five months after the filing of the motion. 545 F. 2d at 334.

In the instant case, the Motion to Dismiss for lack of a speedy trial was not made for eighteen months, but as pointed out above, trial was not commenced for approximately fifteen months after the filing of Appellant's Motion to Dismiss. In our view, Appellant's filing of the Motion to Dismiss in October, 1975 certainly must be viewed as a timely assertion of his Sixth Amendment rights. This assertion of the right or lack of assertion is of course one of the factors which the Supreme Court established in Barker v. Wingo, supra. In our view just as the defendant in Vispi asserted the right, so also Appellant, Carini, by filing his Motion to Dismiss certainly put the Court on notice as of October, 1975 at any rate, that he was pressing for trial. The fact that it took fifteen months after that assertion to set a date for trial seems unjustifiable. Whatever the reasons for the studied indifference to defendant's right to a speedy trial, the totality of the circumstances require dismissal.

It has been well established by this Court in Vispi and the cases cited therein,² that so-called institutional delay does not exonerate the Government from pressing the Court for a prompt trial. The Government cannot escape this duty by claiming that the delay is merely institutional. See United States v. Bowman, 493 F. 2d 594 (2d Cir. 1974); United States v. Favolaro, 493 F. 2d 623, 625 (2d Cir. 1974).

In the instant case, the Government did nothing more than it did in Vispi, i.e. file a pro forma Motion to Set Date for Trial as it did most probably at that time in all the cases pending before the District Court.

As the Court said in Vispi:

"Both the court and the government had a responsibility not only to the defendant but to the public to see that this simple little case was tried promptly rather than delayed for more than a year. They failed in that responsibility." 545 F. 2d at 334

There is nothing to indicate that since Appellant's Motion in October, 1975 to dismiss for lack

² 545 F. 2d at 334

of a speedy trial Appellant was not at all times ready to proceed to trial.

Institutional delays are chargeable to the Government, although not treated with the same severity as delays procured by the prosecution for tactical advantage. United States v. West, 504 F. 2d 253, 256 (D.C. Cir. 1974)

The Government has never satisfactorily indicated the basis for the inordinate delay in getting this case to trial.

Another of the factors to be considered under the Barker v. Wingo, supra, test is the prejudice to the defendant.

In defining the requisite "prejudice" this Court stated in Vispi, 545 F. 2d at 334:

" . . . it is obvious that although specific handicaps attributable to the post information delay in the present case are difficult to pinpoint, Vispi did suffer substantial harm of the type which the Sixth Amendment was intended to remedy."

Here, in the instant case, Appellant was denied the "fair and prompt chance to exculpate himself, as well as to be relieved of the anxiety and societal pressures of a public accusation of criminal conduct, [which] lies at the root of the Sixth Amendment's guarantee of a speedy trial." 545 F 2d at 335.

In the instant case a delay of thirty-four months was fourteen months longer delay than that which occurred in Vispi. This Court held that the twenty month period in Vispi was significant in light of the circumstances of that case. Surely, based on the facts of the instant case the thirty-four month period of delay is equally significant and warrants dismissal.

While it is true that there may have been other significant factors in Vispi, nevertheless, this exceptionally long thirty-four month period during which Appellant stood accused but not tried seems contrary to the basic rationale of the Sixth Amendment. Appellant was accused personally of an offense which related primarily to the corporation's management. As

president of a construction company, the burdens of having a pending criminal charge concerning failure to pay employee withholding charges must have had a substantial affect on his daily employee-employer relations. This type of charge by its nature questioned Appellant's integrity and honesty which would greatly affect his business dealings in the community.

In addition, throughout the thirty-four month period of delay, the Internal Revenue Service continued to require Appellant to make the weekly deposits of the withholding taxes and Federal Insurance Contributions Act taxes thus placing an additional burden on his business operation. These items are in addition to the pressures and anxieties which result from the pendency of criminal charges. As this Court stated in United States v. Roberts, 515 F. 2d 642, 645 (1975):

"The Sixth Amendment's guarantee of a speedy trial gives recognition to an accused's significant stakes - psychological, physical and financial - in the prompt determination of a proceeding which may ultimately deprive him of life, liberty or property."

In addition, the delay had an affect on Appellant's defense to the charge.

The defense relied upon³ at trial was the exception to the statute found at 26 U.S.C. Section 7215 (b) (2) exonerating one who fails to make the required bank deposits if such failure was "due to circumstances beyond his control."

The Defendant's theory was that since there were so many judgments, attachments and restraining notices against him on his bank accounts that he had no actual control over his funds and no ability to make the payments as required to the special Internal Revenue Service bank account during the fall of 1973 (Tr. 109-119). Appellant testified to several instances during the period in question when his bank account was seized and he was unable to use the funds there without satisfying

³ Appellant was not given an opportunity to make an opening statement and outline his defense because the Court insisted that Appellant make its statement before the Government's case (Tr. 3 - 3a). In Appellant's view this rule violates the Fifth Amendment and requires the Defendant to make a statement of what the defendant's evidence will be when the defendant is under no obligation until it hears the Government's case to introduce any evidence whatsoever. But see United States v. Conti, 361 F. 2d 153 (2d Cir. 1966)

whatever judgment creditor had attached the account. Tr. 110-116, 119, 123). Although testimony was presented about certain transactions during that period of time by Appellant, he faced a difficult task of recollecting events which occurred three and one-half years earlier concerning those actions taken by creditors to seize his bank accounts. Because of the number of judgments⁴ against him, and the Internal Revenue Service's own collection efforts against Appellant (Tr. 113, 115-116), Appellant's ability to recall specific details and specific conversations was certainly weakened by the three and one-half year delay.

When all the factors suggested in Barker v. Wingo, supra, as crucial are considered it seems clear that Appellant was denied his right to a speedy trial.

The actual delay of thirty-four months seems intolerably long by any standard, and certainly by the

⁴ Appellant testified that there were 17 judgments against him during the fall of 1973 in addition to the Internal Revenue Service collection actions (Tr. 109).

standards of the Speedy Trial Act, 18 U.S.C. Section 3161.

Here there seems to be no justifiable reasons for such an extended delay. Nothing about the case warranted or justified such a delay. Appellant pressed for trial approximately half way through the delay by filing his Motion to Dismiss. The prejudice to Appellant is real whether considered as personal and emotional or whether considered as affecting his ability to fully and accurately present his defense to the charges.

In light of the totality of the circumstances, the delay in this case was inexcusable and violates the fundamental principles established by the Sixth Amendment. Appellant was not afforded a speedy trial and therefore the information should be dismissed.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be reversed

and the District Court should be directed to dismiss the
information.



David G. Larimer, Esq.
Counsel for Appellant

APPENDIX

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

LOUIS CARINI,

Defendant

:

:

:

:

:

I N F O R M A T I O N

NO. 74-106

VIO.: T. 26, U.S.C.,
§7215

The United States Attorney charges:

1. During the period December 31, 1971, to the date of the filing of this Information, LOUIS CARINI was president of Carini Construction Corporation, an employer of labor required under the provisions of the Internal Revenue Code to collect, account for, and pay over to the United States the Federal Insurance Contributions Act taxes and federal income taxes withheld from wages.

2. LOUIS CARINI, as president of Carini Construction Corporation, did fail at the time and in the manner prescribed by the Internal Revenue Code, and Regulations promulgated pursuant thereto, to collect, truthfully account for, and pay over and to make deposits and payments of the aforesaid withheld taxes to the United States which were due and owing for the quarters ending June 30, 1972, in the amount of \$922.98; September 30, 1972, in the amount of \$2,042.32; June 30, 1973, in the amount of \$4,365.01; September 30, 1973, in the amount of \$7,525.10, and December 31, 1973, in the amount of \$1,325.89.

3. LOUIS CARINI, as president of Carini Construction Corporation, was on August 24, 1973, notified of such failure by notice delivered in hand to Louis Carini, president, as provided by Section 7512, Title 26, United States Code, which said notice did require him to collect the aforesaid taxes which became collectible after delivery of such notice, and, not later than the

end of the second banking day after such collection, to deposit said taxes in a separate bank account established by him in trust for the United States to be kept therein until paid over to the United States.

4. Within the Western District of New York, the defendant, LOUIS CARINI, as president of Carini Construction Corporation, unlawfully failed to comply with the provisions of Section 7512, Internal Revenue Code, in that after receiving delivery of the said notice referred to in paragraph 3 of this Information, thereafter collected the taxes referred to in paragraph 3 on the dates and in the amounts hereinafter set forth in Counts One through Ten but failed to deposit said taxes within two banking days after said taxes were collected in a separate bank account in trust for the United States as follows:

	<u>Date Wages Paid</u>	<u>Date Deposit Required</u>	<u>Amount of Deposits Required</u>
Count I	9/13/73	9/17/73	\$364.77
Count II	9/20/73	9/24/73	479.40
Count III	9/27/73	10/1/73	308.60
Count IV	10/4/73	10/9/73	312.21
Count V	10/11/73	10/15/73	493.84
Count VI	10/18/73	10/23/73	261.84
Count VII	10/25/73	10/29/73	363.00
Count VIII	11/1/73	11/5/73	352.29
Count IX	11/8/73	11/12/73	253.66
Count X	11/15/73	11/19/73	144.72

All in violation of Section 7215, Internal Revenue Code;

Title 26, United States Code, Section 7215.

Dated at Rochester, New York, March 15, 1974.

JOHN T. ELFIN
United States Attorney in and for
the Western District of New York
Office and Post Office Address:
233 U. S. Courthouse
Rochester, New York 14614

23
By: GERALD J. HOULIHAN
Assistant United States Attorney

Form No. 650

No. _____

United States District Court
FOR THE

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

LOUIS CARINI

INFORMATION

JOHN T. ELEVEN

United States Attorney in and for
the Western District of New York
Office and Post Office Address:
233 U. S. Courthouse
Rochester, New York 14614

Filed _____, 19____

_____, Clerk.

By _____, Deputy.

BEST COPY AVAILABLE

Rochester, New York

Monday, January 31, 1977

10:00 a.m.

— — —
(Trial resumed; jury present.)

(Mr. Houlihan made a closing statement
on behalf of the Government.)

(Mr. Loximer made a closing statement
on behalf of the Defendant.)

(Mr. Houlihan made a rebuttal closing
statement on behalf of the Government.)

CHARGE TO THE JURY

THE COURT: Members of the jury, the Internal Revenue Law provides that any person who is required to collect, account for, and pay over any taxes imposed by law, if notice has been delivered to such person, shall collect the taxes imposed and shall not later than the end of the second banking day after any amount of such taxes is collected, shall deposit such amount in a separate trust account until payment over to the United States.

The law further provides that any person who fails to comply with the provisions I have just recited shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to the punishment provided

by the statute. The law further provides exceptions from these provisions to any person, if such person shows that there was a reasonable doubt as to whether the law required collection of the taxes or a doubt as to who was required by law to collect the taxes, an exception to any person if such person shows that the failure to comply with the provisions was due to circumstances beyond his control. The law further provides, however, that a lack of funds shall not be considered to be circumstances beyond the control of a person.

The United States Attorney filed an Information against Louis Carini, the defendant in this case. The Information charged that during the period September 13, 1973, to the date of the filing of the Information, that Carini was President of Carini Construction Company, and that he was required under the provisions of law to collect, account for, and pay over to the United States Social Security taxes and Federal income taxes withheld from wages of employees.

The Information further charges that Carini, as President, did fail to collect, truthfully account for, pay over, and to make deposits and payments of such withheld taxes to the United States which were due and owing for the periods ending September, 1973, and several succeeding periods thereafter.

The Information charges that Carini, as President, was notified of such failure by notice delivered to him, as provided by law, which notice did require Carini to collect the taxes and not later than the end of the second banking day after such collection, to deposit the taxes in a separate trust account in trust for the United States to be kept therein until paid over to the United States.

You will note on the second page of the Information, which I shall allow you to take into the jury room, that there are ten separate accusations, or Counts, each relating to the date that the wages were paid, the due date of the deposit required, and the amount of the deposit required.

The first Count relates to the date the wages were paid, namely, on September 13, 1973, and the amount of the deposit required, namely, \$364.77. Then follows Count 2 through Count 10. Count 10 relates to the date November 15, 1973, when the wages were paid and the amount of the deposit required, \$144.72.

I have spoken of an Information, which was filed. An Information is the method under our system of law by which a defendant in certain cases is exactly apprised of the charges against him so that he may be able to formulate his defense. In this case, a defendant may

be accused by the filing of an Information by the United States Attorney, which serves instead of an Indictment. An Information is nothing more than an accusation. It is not to be construed as any indication of guilt. It is only a method of accusing the defendant of a misdemeanor charge so that he may formulate his defense.

The evidence has established that Carini was President of Carini Construction Company and that the company was an employer of labor. The law does not provide that the President of a company is required under the law to collect for, account for, and pay over to the United States the Social Security taxes and Federal income taxes withheld from wages. Under the law a person required to collect, account for, and pay over the taxes to the government, includes officers or employees of a corporation with significant control of the financial decision-making process within the corporation. It is for you as jurors to determine from all of the evidence Element No. 1, namely, whether Carini, as President of the company, had significant control over the financial decision-making process within the corporation. If the evidence establishes that he did have such control, then he was a person required to collect, account for and deposit in a trust account to be turned over to the United States the taxes withheld.

Pursuant to the warning notice, a trust account was opened by Carini on August 29th, 1973, with a deposit of \$754. The only other deposit was \$300 on November 26th, 1973.

The defendant had a number of judgments against him. Carini had six jobs going in 1971. He lost money on several jobs that year and the following year. His bank accounts were attached. The company was in bad shape financially. There is no question about that.

The Government has the burden of establishing beyond a reasonable doubt; (1) That Carini was the person required to collect, account for, and to deposit the withheld funds for taxes in the special account in trust for the Government; (2) The Government also has the burden of establishing beyond a reasonable doubt that the failure to deposit the withheld taxes in the special trust account in September, October and November, 1973, was not due to circumstances beyond Carini's control. Note especially that the Government has the burden to establish both elements and that the failure to establish one or the other, or both, would require a finding of not guilty.

Each Count is a specific charge regarding a particular period of time, and each Count must be considered separately, and a conclusion of guilt or

innocence be made on each separate Count.

This defendant, as every defendant in a criminal case, is presumed to be innocent, and that presumption remains with him throughout the entire case and can only be overcome by evidence which establishes it beyond a reasonable doubt.

119 The burden of establishing guilt beyond a reasonable doubt is always upon the Government. The defendant has no burden to prove his own innocence. You should be very careful in your deliberations not to impose that burden on him.

A reasonable doubt means a doubt that is a real or substantial doubt as to the guilt of the defendant. It is a doubt based upon reason or logic as distinguished from a doubt that might be based upon some emotion, such as a whim, a fancy, a caprice, or even a so-called hunch. To establish guilt beyond a reasonable doubt means to establish guilt to a moral certainty.

You, as jurors, are the sole judges of the credibility of the witnesses. You, as jurors, are the sole judges of the facts. It is the duty of the Court to instruct you as to what the law is so that you can apply the law to the facts as you find them.

Some of the witnesses in this case manifestly have an interest in the outcome of the case, and that

refers to witnesses on both sides of the case. It is your duty to determine whether you believe the interest of a witness has led the witness to color his or her testimony in favor of one side or the other. If you think it has, you should discount the testimony accordingly. If you believe that any witness in the case has testified falsely in regard to some material aspect of the case, you may, if you choose, reject the testimony of that witness in its entirety.

In this case we have heard testimony of a number of witnesses who have testified to the defendant's good reputation for honesty and truthfulness. This is commonly known as character testimony. Evidence of good character when considered in connection with the other evidence in the case might conceivably be sufficient to give rise to a reasonable doubt as to the guilt of the defendant. The circumstances might conceivably be such that the established reputation for good character would alone create a reasonable doubt; although without it, the other evidence in the case would be convincing.

You may take all of the Exhibits with you into the jury room along with the original Information, which I'm now handing to the Clerk.

You must return a verdict of either guilty or

not guilty on each Count. No explanation of your verdict is required; no explanation is appropriate. Your conclusion to be effective as a verdict must be unanimous. Your verdict as to each of the Counts of the Information need not necessarily be the same.

Are there any requests or exceptions?

MR. HOULIHAN: I have no requests or exceptions, Your Honor.

MR. LARTHER: I have no requests or exceptions, Your Honor.

THE COURT: It is my duty to excuse the alternate in the case, and thank you very much for your services.

(Alternate juror excused.)

(Two marshals were duly sworn.)

(At 11:45 a.m., the jury retired to deliberate upon a verdict.)

(At 2:55 p.m., the jury returned to the courtroom.)

THE CLERK: Members of the jury, have you agreed upon your verdict?

THE FOREMAN: Yes, we have.

THE CLERK: How do you find on Count 1?

THE FOREMAN: Guilty.

THE CLERK: How do you find on

Count 2?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 3?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 4?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 5?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 6?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 7?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 8?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 9?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 10?

THE FOREMAN: Guilty.

THE CLERK: Please listen as the

Count records your verdict. You found the defendant guilty on Count 1; guilty on Count 2, guilty on Count 3; guilty on Count 4; guilty on Count 5; guilty on Count 6; guilty on Count 7; guilty on Count 8; guilty on Count 9; guilty on Count 10.

Is your verdict as the Court has recorded it, so say you all?

THE FOREMAN: Yes.

THE COURT: The jury is excused until February 3rd.

(Jury excused.)

MR. LARSEN: Are you going to set a date for sentencing, Your Honor?

THE COURT: February 23th.

(At 3:00 p.m., Monday, January 31, 1977, the trial in the above-entitled matter was concluded.)

- - -

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES

- VS -

CR: 74-106

LOUIS CARINI

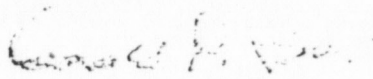
Gerald J. Houlihan
Assistant United States Attorney
for the government

Elliott, Stern & Calabrese
1 East Main Street
Rochester, N.Y. 14614
Attorneys for defendant

By motion filed October 28, 1975 the defendant
moves to dismiss the indictment. On November 7, 1975
the government filed its response.

The motion is in all respects denied.

SO ORDERED.


HAROLD P. BURKE
United States District Judge

March 2, 1976.

HAROLD P. BOWEN

C-74 - 106

6

Offenses: 12/31/1971 thru 3/15/1974 10 Cts.

DATE	PROCEEDINGS
1974	
Mar. 15	Filed Information
Mar. 15	J.S. 2 made
Mar. 25	Arraignment. Deft. present with counsel, waives reading of the information and enters a plea of not guilty. Deft. is released on his own recog.
Apr. 30	Filed Govt's notice of motion, and motion to set a date for trial for the criminal trial calendar, ret. 5/13/1974-Roch.
May 13	Motion by Govt. to set date for trial. Adj. until 5/28/1974.
May 21	Filed Ct. Steno's minutes of 3/25/1974
May 28	Motion by Govt. to set date for trial. The Govt. is ready and advises the Court that the deft. is ready and that there is a possibility of a plea. Trial date to be fixed.
1975	
Sept. 18	Filed Government's notice of motion, motion, affidavit of service, to set a date for trial for criminal trial calendar, Ret. 10/14/1975-Roch.
Oct. 14	Motion by Govt. to set date for trial. All motions returnable 10-28-75
Oct. 28	Filed notice of motion

PROCEEDINGS

DATE	PROCEEDINGS
1975	
Oct. 23	Motion by Govt. to set date for trial. Motion by Deft to dismiss indic Adj. until 11-10-75.
Nov. 7	Filed Government's response to defendant's motion--
Nov. 24	Motion by Govt. to set date for trial. The Govt. is ready. Motion by deft. to dismiss indictment. Submitted.
1976	
Mar. 3	Filed Decision & Order denying deft's motion to dismiss--BURKE, J.
Apr. 29	Filed Govt's notice of motion to set a date for trial for criminal trial calendar, ret. 5/10/76-Roch.
May 10	Motion by Govt. to set date for trial. The Govt. is ready. Adj. at the request of the Deft. 5/24/76
May 27	Filed Cy. 5 of CJA-20 - Order appointing David G. Larimer counsel for the Deft. replacing Herbert Stern, previously retained-- Burke, J.; Cy. to the Adm. office, orig. ret. to counsel for submission of voucher.
May 24	Motion by Govt. to set date for trial. Lawyer appointed last week for deft. New Motion to be filed.
1976	
Oct. 4	Filed Govt's Notice of motion and motion for an Order assigning a Judge to assume responsibility in this case so that it may be tried within the time period prescribed by the Speedy Trial Act. (18 U.S. Sect. 3161, et seq.); This motion is submitted to the Court for decision without oral argument
Dec. 7	Filed Govt's motion to set a date for trial.
Dec. 13	Motion by Govt. to set date for trial. The Govt. and the deft. are ready for trial. Trial date 1/27/77.
1977	
Jan. 14	Filed Deft's notice of motion for discovery and inspection and Bill of Particulars ret. 1/24/77-Roch.
Jan. 24	Motion by Deft. for discovery and inspection. Agreed to, taken off the Calendar.
Jan. 27	Govt. moves case ready for trial, before Judge Burke, at Rochester, N.Y. and the jury is duly empanelled - Witnesses testify. Trial is adj.
Jan. 28	Trial continues from yesterday with the same appearances. Jury is excu The Deft. moves for a judgment of acquittal. Motion denied. The jury returns. The deft. rests. The jury is excused. The deft. renews motions to dismiss. Denied. Trial is adj. until Monday.
Jan. 31	Trial continues from Friday with the same appearances. The jury retire to deliberate upon their verdict. The Jury returns with the following verdict: Deft. guilty on all counts. - 1 thru 10. Sentence is deferred 2/28/77.
Feb. 28	Defendant is sentenced as follows: The Court: I impose a fine of \$500 on each of ten counts. The fines are remitted on all counts except the fine on the first count. Fine to be paid in two wee BURKE, J.
Mar. 15	Filed Judgment.
Mar. 9	Filed Deft's Notice of appeal.
Mar. 15	Cy. of deft's Notice of appeal, mailed to the U.S. Atty., and the CCA with statement of docket entries
Apr. 18, 1977	Filed one volume of trial transcript.
Apr. 27	original pertinent papers, clerk's certificate, index to record on appea mailed to CCA.
May 24	

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs CARINI, LOUIS

74 Yr. 74-106 Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
May 24	(Document No.) Filed copy 2 CJA 20 voucher in the amt. of \$775.00, orig to Adm. office for payment. BURKE, J.				

AFFIDAVIT OF SERVICE

UNITED STATES OF AMERICA,
Appellee

vs.

LOUIS CARINI,
Appellant

STATE OF NEW YORK)
COUNTY OF MONROE) SS:
CITY OF ROCHESTER)

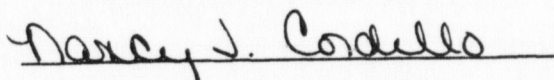
DAVID G. LARIMER being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides at Rochester, New York.

On May 27, 1977 at the Federal Building, State Street, Rochester, New York deponent served the Brief for Appellant upon Gerald Houlihan, Assistant U. S. Attorney by delivering a true copy thereof to him personally. Deponent knew the person so served to be the attorney for the United States of America herein.


David G. Larimer

Sworn to before me

this 27 day of May, 1977.



NANCY J. CORDELLO
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1978

